These are the tentative rulings for civil law and motion matters set for Thursday, September 25, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, September 24, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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1. **M-CV-0061442 DeCur, Donna T. vs. Ruddell, Kristie**

Defendant's motion to set aside is dropped from the calendar in light of the parties' stipulation and order entered on September 24, 2014.

2. **M-CV-0061831 Javidan, Zohal vs Gillespie, Christine et al**

The motion for leave to file a first amended complaint is dropped from the calendar as no moving papers were filed with the court.

3. **S-CV-0028480 Martel, Richard S. vs. Litchfield, Robert L.**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall be heard at 8:30 a.m. in Department 43:

Plaintiff's Motion for Protective Order

Preliminary Issues

As an initial matter, the court strikes the opposition since it has not been signed by defendant. (Code of Civil Procedure section 128.7(a).) Defendant is admonished to ensure that any future documents are properly executed and presented to the court.

Ruling on Motion

Plaintiff's motion is denied. A party may move for a protective order to prevent the need to respond to special interrogatories and inspection demands. (Code of Civil Procedure sections 2030.090; 2031.060.) Such motions require the moving party to attach a meet and confer declaration. (Code of Civil Procedure sections 2030.090(a), 2031.060(a).) Plaintiff fails to attach the required declaration demonstrating an attempt to meet and confer with defendant prior to bringing the motion. Furthermore, plaintiff has not made a good cause showing the requested discovery is an unwarranted annoyance, embarrassment, oppression, or undue burden and expense. (Code of Civil Procedure section 2030.090(b), 2031.060(b).) A review of the propounded discovery shows the requests are reasonable and seek relevant information. For these reasons, the motion is denied.

4. S-CV-0028746 Henry, Patric vs. Raleys, et al

The motion to dismiss is dropped from the calendar at the request of the moving party.

5. S-CV-0029524 Carver, Ronald vs. Sutter Roseville Medical Ctr., et al

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, such argument shall be heard at 8:30 a.m. in Department 42:

Plaintiff's Motion to Tax Costs is granted in part.

Upon a challenge to a verified cost memorandum, the burden is upon the party opposing the costs to show they were not reasonable or necessary. (*Ladas v. California State Auto. Assn. (1993) 19 Cal.App.4th 761, 774; Nelson v. Anderson (1999) 72 Cal.Ap.4th 111, 131*.) Costs that are properly objected to are put in issue, shifting the burden to the party claiming such costs. (*Ladas v. California State Auto. Assn., supra; Fennessy v. DeLeuw-Cather Corp. (1990) 218 Cal.Ap.3d 1192, 1195-1196.*)

First, defendant is entitled to recover his filing and motion costs.

A preliminary question to be resolved with respect to the expert witness fees claimed by defendant as costs is whether defendant's statutory offer to compromise was made in good faith. This lawsuit was filed on August 3, 2011. It was not until September 28, 2012 that defendant served his statutory offer to compromise pursuant to Code of Civil Procedure section 998. The offer was that defendant would waive costs. By the time of the offer, the case had been litigated for a year and the initial trial date had been continued. Defendant served his motion for summary judgment two days earlier.

Plaintiff contends the offer made here was not reasonable or made in good faith for purposes of determining costs. To be valid, an offer made under Code of Civil Procedure section 998 must be made in good faith, which requires that the offer of

settlement be "realistically reasonable under the circumstances of the particular case...." (*Jones v. Dumrichob (1998) 63 Cal.App.4th 1258, 1262* (*Jones*); *Wear v. Calderon (1981) 121 Cal.App.3d 818, 821*.) In *Jones* the court held that an offer to waive costs was a reasonable, good faith offer. The plaintiffs in *Jones* sued the defendant for medical malpractice and sexual battery. The defendant issued a section 998 offer "to allow judgment to be taken against him for a waiver of costs." (*Jones, at p. 1261*.) The jury found in favor of the defendant, and he sought his expert witness fees pursuant to section 998. The trial court awarded the defendant the fees sought. Plaintiffs argued that the trial court erred because the defendant's section 998 offer was not reasonable. The appellate court observed that the defendant's offer to waive his right to recover his costs carried with it "significant monetary value" – the potential avoidance of a significant adverse judgment for costs. (*Jones, at p. 1263*.) The court also concluded that the absence of an offer to pay plaintiffs any money to settle the case did not automatically establish the offer was made in bad faith. (*Id. at p. 1264*.) "[W]hen a party obtains a judgment more favorable than its pretrial offer, [the offer] is presumed to have been reasonable and the opposing party bears the burden of showing otherwise." (*Thompson v. Miller (2003) 112 Cal.App.4th 327, 338–339; accord, Hartline v. Kaiser Foundation Hospitals (2005) 132 Cal.App.4th 458, 471*.)

With these principles in mind, the court finds defendant's statutory offer to be realistically reasonable under the circumstances of this case. Although plaintiff survived defendant's motion for summary judgment, it should have been clear to plaintiff that he faced a severely uphill battle in prevailing in this matter. The subsequent favorable judgment obtained by defendant creates a presumption that his statutory offer was reasonable and plaintiff has not shown otherwise. Accordingly, the court will determine this motion to tax costs in light of the finding that the offer was reasonable and made in good faith.

The court finds the expert witness fees claimed for Dr. Kong are reasonable. Dr. Kong was disclosed as a non-retained medical expert. He testified at trial and gave "percipient expert opinion testimony on the patient's treatment, diagnosis, or prognosis" (*Plunkett v. Spaulding (1997) 52 Cal.App.4th 114, 133*) and witness fees for such are proper under Government Code section 68092.5(a)(2). The fees claimed for Dr. Kong were all incurred after defendant's offer pursuant to Code of Civil Procedure section 998.

Defendant has not sufficiently established that the $1,000.00 in costs claimed for the appearance of Jon Knapp is reasonable. Defendant claims these costs are recoverable under Government Code section 68092.5(3). However, no such subsection exists. Nor does any other subsection of Government Code section 68092.5 appear applicable. Nor has defendant sufficiently established Mr. Knapp was a retained expert or treating physician. Under these circumstances, defendant cannot establish a rate higher than that listed in Government Code section 68093. Thus, as to costs claimed relating to Mr. Knapp, defendant is entitled to recover $35.00 and $0.20 per mile for a total of $47.00. Defendant's costs are taxed by $953.00.

Last, plaintiff seeks to tax the costs claimed for the services and testimony provided by Dr. Timothy Albertson. According to the declaration of attorney Cobden, the defendant made his statutory offer to compromise on September 28, 2012. The "invoice" for Dr. Albertson consists of a one-paragraph letter from Dr. Albertson to defense counsel. Dr. Albertson states he devoted six hours to "pre-deposition time for review of the medical records, police reports and depositions," which included meetings and phone calls that occurred in December 2012. Although it is evident that time was spent on meetings and phone calls in December 2012 – which would be after the Code of Civil Procedure section section 998 offer – it is unclear whether some or all of Dr. Albertson's "review of medical records, police reports and depositions" occurred before the Code of Civil Procedure section 998 offer was made on September 28, 2012. Such expert costs may be paid only from the time of the offer (*Code of Civil Procedure section 998(c)(1)*), and it is the burden of the party claiming costs to establish these costs were incurred post-offer. Defendant has not met his burden on this portion of the costs claimed for Dr. Albertson. The six hours Dr. Albertson devoted to pretrial review and for phone calls on August 28, 2013, July 19, 2014 and July 20, 2014 are reasonable, post-offer costs. The billing for "six hours of blocked time, travel time and trial testimony on July 21, 2014" is not sufficiently itemized and appears excessive. Expert witness fees awarded under Code of Civil Procedure section 998 are subject to the restriction that they be reasonably necessary and the trial court has discretion to disallow fees it determines were unnecessarily incurred. Here, there is no breakdown as to what amounts of time were for "blocked time;" what comprises "blocked time;" and how much time is devoted to travel. Dr. Albertson was called to testify immediately after the lunch recess on July 21, 2014. He testified for less than an hour. Assuming he traveled from Davis (the address he lists on his invoice letter) to Roseville, and returned, the court finds that three hours were reasonably incurred for his trial day services. Thus, altogether, a total of nine hours billed by Dr. Albertson are disallowed. Defendant's claimed costs related to Dr. Albertson are thus taxed an additional $4,500.

Defendant's costs are taxed by a total of $5,453.

6. S-CV-0032158 Gortner, Catherine Willis, et al vs. Royal Gorge, LLC

The two motions for summary judgment are continued, on the court's own motion, to October 2, 2014 at 8:30 a.m. in Department 40.

7. S-CV-0032450 Thunderbolt Holdings Ltd., LLC vs. Adi, Mohammed

The motion to substitute plaintiff is dropped from the calendar as no moving papers were filed with the court. It is also noted that the case was dismissed by the court at the June 3, 2014 OSC hearing.

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8. S-CV-0033186 Duncan, Bruce vs. Nationstar Mortgage, LLC

The motion for summary judgment is continued, on the court's own motion, to October 9, 2014 at 8:30 a.m. in Department 40. The court has been notified that the parties may have reached a settlement.

9. S-CV-0033748 Arnold, Clayeo C. vs. Carter, Wolden & Curtis, et al

The demurrer and case management conference are continued to November 13, 2014 at 8:30 a.m. in Department 42 pursuant to the stipulation and order of the parties entered on September 22, 2014.

10. S-CV-0034086 Manning, Tony vs. Mills, Charles F., Jr.

The motion to compel responses and motion to deem requests for admissions admitted are both dropped from the calendar as no moving papers were filed with the court.

11. S-CV-0034268 Selwyn D.J. Vos vs. Reconstuct Company, N.A.

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall be heard at 8:30 a.m. in Department 43:

Defendant's Demurrer to the First Amended Complaint

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted pursuant to Evidence Code section 452.

Ruling on Demurrer

Defendant's unopposed demurrer is sustained without leave to amend. A demurrer is available based upon any grounds or objections that appear on the face of the complaint in conjunction with any matters that are judicially noticeable. (Code of Civil Procedure section 430.30(a).) A party may also demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure section 430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.)

Defendant challenges the entire FAC. While a review of the pleading reveals significant defects as to the factual bases for each cause of action, of particular import is defendant's primary assertion that the doctrine of res judicata bars the entire FAC. " 'The

doctrine of res judicata rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigated, or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent. Public policy and the interest of litigants alike require that there be an end to litigation.' [Citation.] The doctrine applies when 1) the issues decided in the prior adjudication are identical with those presented in the later action; 2) there was a final judgment on the merits in the prior action; and 3) the party against whom the plea is raised was a party or was in privity with a party to the prior adjudication. [Citation.] Even if these threshold requirements are established, res judicata will not be applied 'if injustice would result or if the public interest requires that relitigation not be foreclosed. [Citations.]' [Citation.] To determine whether to sustain a demurrer on res judicata grounds, judicial notice may be taken of a prior judgment and other court records. [Citations.]" (*Citizens for Open Access etc. Tide, Inc. v. Seadrift Association* (1998) 60 Cal.App.4th 1053, 1065.)

The prior action was initiated by plaintiff against defendant in El Dorado Superior Court Case Selwyn D.J. Vos v. Bank of America, et al., Case No. PC20120353, where plaintiff asserted a fraud cause of action stemming from his challenge to defendant's ability to transfer the subject property. (Defendant's Request for Judicial Notice, Exhibits 7, 8, 9.) The El Dorado Court entered a judgment of dismissal in that case on August 23, 2013 after defendant successfully demurred to the FAC. (Id. at Exhibit 9.) In this case, the FAC asserts negligence and another theory of fraud. The primary issues in both cases, however, involve the alleged wrongful transfer of the subject property. " 'Res judicata precludes piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different relief.' [Citation.]" (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897.) California courts define what constitutes a cause of action based upon the primary right theory. (*Gamble v. General Foods Corporation* (1991) 229 Cal.App.3d 893, 898.) "[T]he primary right is simply the plaintiff's right to be free from the particular injury suffered. [Citation.] It must therefore be distinguished from the *legal theory* on which liability for that injury is premised: 'Even where there are multiple legal theories upon which recovery might be predicated, *one injury gives rise to only one claim for relief*.' [Citation.] The primary right must also be distinguished from the *remedy* sought: 'The violation of one primary right constitutes a single cause of action, though it may entitle the injured party to many forms of relief, and the relief is not to be confounded with the cause of action, one not being determinative of the other.' [Citation.]' " [Emphasis added.] (*Id*. at p. 904.) The injury in both cases is identical, the alleged wrongful transfer of the subject property. The fact that he pled different legal theories does not affect the primary right, which is the same in both cases. Since final judgment was entered in the prior action and it involved the same parties subject to this case, the doctrine of res judicata applies and bars the current action.

Furthermore, the FAC does not allege sufficient facts to support either cause of action. Specifically, there are insufficient allegations to overcome the qualified privilege under Civil Code section 2924. The non-judicial foreclosure statutory scheme specifically provides a privilege to trustees, "[i]n performing acts required by this article,

the trustee shall incur no liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage. In performing the acts required by this article, a trustee shall not be subject to [the Rosenthal Fair Debt Collection Practices Act]." (*Civil Code section 2924(b).*) Moreover, the recording of a notice of default and associated procedures are privileged under Civil Code section 47. (*Civil Code section 2924(d).*) As currently pled, the complaint fails to allege sufficient facts to demonstrate that the privilege does not apply to the defendant. There are also a lack of sufficient factual allegations to sufficiently support a negligence cause of action or a fraud cause of action.

Plaintiff failed to oppose the demurrer, which may be construed as having abandoned the claims. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.) A review of the FAC also demonstrates no ability to cure the deficiencies if leave to amend were granted. (*Assoc. of Comm. Org. or Reform Now v. Dept. of Indus. Relations (1995) 41 Cal.App.4th 298, 302.*) In light of this, the demurrer is sustained without leave to amend.

Plaintiff's Motion for Entry of Judgment

In light of the court's ruling on the demurrer, the motion is dropped as moot.

12. S-CV-0034302 Schmitz, Michie Anne vs. Central Mortgage Co., et al

Plaintiff's OSC re Application for Preliminary Injunction is denied.

Defendants' request for judicial notice is granted pursuant to Evid. Code §452.

The court may grant a preliminary injunction when it appears from the complaint that the plaintiff is entitled to the demanded relief and the plaintiff would suffer irreparable injury if the enjoined action were allowed to proceed. (CCP§526(a).) A foreclosure sale may be enjoined under the same elements applicable for other requests for injunctive relief, namely after a (1) balancing of the hardships of the parties and (2) a showing by the plaintiff of a reasonable probability of prevailing on the merits. (*Baypoint Mortgage Corp. v. Crest Premium Real Estate etc. Trust* (1985) 168 Cal.App.3d 818, 824; *Robbins v. Superior Court* (1985) 38 Cal.3d 199.) The plaintiff has the burden of showing he/she would be harmed if the preliminary injunction were not granted. (*Casmalia Resources, Ltd. v. County of Santa Barbara* (1987) 195 Cal.App.3d 827, 838.)

As to the initial analysis of hardship upon plaintiff, she claims the hardship includes the ultimate loss of her home. (Schmitz declaration ¶12.) The harm to the defendants is the loss of opportunity to proceed with the foreclosure sale along with the loss of any proceeds from the sale. In most instances, the hardship to plaintiff would overwhelm that of defendants.

However, the hardships must be placed in the perspective of the entire situation. Plaintiff ceased making payments on the mortgage in September of 2009. (McPherson declaration ¶30.) She has remained in the home since this time without attempts to pay the arrearages, which now total $85,020.29. (Ibid.) Plaintiff has remained in the home for 5 years without any payment to defendants. She now seeks to continue to enjoin the sale since she "will have no where (sic) to call home". (Schmitz declaration ¶12.) The court does not take lightly the loss of a family home. Nonetheless, the typical homeowner is not afforded five years to remain in a home without paying the financial obligations owed on the property. Plaintiff's request will keep defendants in a state of limbo with no proposed end and no monetary compensation. As such, the hardships upon the parties tip in favor of defendants rather than plaintiff.

The second part of the analysis goes to the reasonable probability that the Plaintiffs will prevail on the merits of their action. Plaintiff, however, provides insufficient evidence to establish she will prevail on any of her causes of action. She submits a single declaration, her own, that provides conclusory, general statements. These general statements provide no specifics to support the allegations in her complaint. Plaintiff has failed to submit sufficient evidence to establish any of her causes of action have merit.

Finally, a preliminary injunction is an equitable remedy. (*Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 454-455.) As with any equitable remedy, one that seeks equity must do equity. (Ibid; *Wilkins v. Oken* (1958) 157 Cal.App.2d 603, 605.) An undertaking must be ordered whenever an injunction is ordered by the court. (CCP§529(a).) Plaintiff fails to address the issue of an undertaking in her declaration and submits no other evidence on the issue. For all of these reasons, the request is denied.

The application for preliminary injunction is denied and the temporary restraining order is dissolved forthwith.

13. S-CV-0034446 Graves, Gene, et al vs. Bank of America, N.A., et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall be heard at 8:30 a.m. in Department 43:

Defendants' Demurrer to First Amended Complaint (FAC)

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted pursuant to Evidence Code section 452.

Ruling on Demurrer

Plaintiff's demurrer is sustained without leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of

the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.) The court reviews the FAC with these principles in mind.

The first cause of action seeks declaratory relief. An action for declaratory requires an actual controversy relating to the legal rights and duties of the parties. (CCP§1060.) The FAC is based upon allegations that the transfer of the deed of trust is void under New York law, which creates an actual controversy regarding the duties, rights, obligations, and title to impose an interest on the property. (FAC ¶¶21-31.) These allegations are insufficient to allege declaratory relief since plaintiffs lack standing to challenge the transfer. (*Mendoza v. JPMorgan Chase Bank, N.A.* (2014) 228 Cal.App.4th 1020, 1029-1034.) Moreover, there are insufficient allegations to sufficiently establish an actual controversy from any alleged improper assignment to show an interference with plaintiff's ability to pay on the obligation under the deed of trust.

The second cause of action alleges UCL violations. "The UCL does not proscribe specific activities, but broadly prohibits any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising. …By proscribing 'any unlawful business practice,' section 17200 'borrows' violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable. Because section 17200 is written in the disjunctive, it establishes three varieties of unfair competition-acts or practices which are unlawful, or unfair, or fraudulent. In other words, a practice is prohibited as 'unfair' or 'deceptive' even if not 'unlawful' and vice versa." [Citations and quotations omitted.] (*Puentes v. Wells Fargo Home Mortg., Inc.* (2008) 160 Cal.App.4th 638, 643-644.) The UCL claim is based upon the same allegations asserted in the first cause of action, namely, the allegations that the transfer of the deed of trust was void. (FAC ¶¶33, 35.) To reiterate, plaintiffs do not have standing to challenge the transfer. (*Mendoza v. JPMorgan Chase Bank, N.A.* (2014) 228 Cal.App.4th 1020, 1029-1034.) Furthermore, the FAC does not sufficiently allege facts that establish unlawful, unfair, or fraudulent business acts/practices. For these reasons, the FAC fails.

The final issue to address is leave to amend. Plaintiffs bear the burden of demonstrating how the complaint may be amended to cure the defects therein. (*Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302.) A demurrer will be sustained without leave to amend absent a showing by plaintiff that a reasonable possibility exists that the defects can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Plaintiffs' opposition frames the FAC as an action challenging defendants' right to collect payments, flatly denying any deficiencies in the FAC. As previously discussed, plaintiffs do not have standing to challenge the transfer of the deed of trust and plaintiffs' reliance upon *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, is undercut by the Third District Court of Appeal's opinion in *Mendoza v. JPMorgan Chase Bank, N.A.* (2014) 228 Cal.App.4th 1020. By plaintiffs' own assertions, the case is not about foreclosure but rather a challenge to the transfer of

the deed of trust; a transfer they have no standing to challenge. In light of this, plaintiffs have not sufficiently shown an amendment would cure the deficiencies in the FAC. Therefore, the demurrer is sustained without leave to amend.

14. S-CV-0034672 Peterson, Larry, et al vs. Acculend Mortgage, LP, et al

The demurrer is dropped from the calendar. A first amended complaint was filed on September 17, 2014.

15. S-CV-0034936 Johnson, James T., III, et al vs. Wells Fargo Bank, N.A.

The demurrer is dropped from the calendar. A first amended complaint was filed on September 16, 2014.

16. S-CV-0035086 Bradbury, Megan, et al – In Re the Petition of

The petition for minor's compromise is continued, on the court's own motion, to October 9, 2014 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

17. S-CV-0035161 Twente, Daniel R., et al vs. Caliber Home Loans, Inc., et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall be heard at 8:30 a.m. in Department 43:

Plaintiffs' OSC re Preliminary Injunction

Preliminary Issues

As an initial matter, plaintiffs request the court disregard defendants' opposition as untimely. The court has discretion to refuse to consider a late filed paper and shall consider the late filed opposition in this instance. (CRC Rule 3.1300(d).)

Ruling on Request for Judicial Notice

Plaintiffs' request for judicial notice is granted pursuant to Evidence Code §452.

Ruling on Preliminary Injunction

Plaintiff's OSC re Application for Preliminary Injunction is denied.

The court may grant a preliminary injunction when it appears from the complaint that the plaintiff is entitled to the demanded relief and the plaintiff would suffer irreparable injury if the enjoined action were allowed to proceed. (CCP§526(a).) A foreclosure sale may be enjoined under the same elements applicable for other requests for injunctive relief, namely after a (1) balancing of the hardships of the parties and (2) a

showing by the plaintiff of a reasonable probability of prevailing on the merits. (*Baypoint Mortgage Corp. v. Crest Premium Real Estate etc. Trust* (1985) 168 Cal.App.3d 818, 824; *Robbins v. Superior Court* (1985) 38 Cal.3d 199.) The plaintiff has the burden of showing he/she would be harmed if the preliminary injunction were not granted. (*Casmalia Resources, Ltd. v. County of Santa Barbara* (1987) 195 Cal.App.3d 827, 838.) Plaintiffs' request is reviewed with these principles in mind.

As to the initial analysis of hardship on plaintiffs, they state the subject property is unique and harm cannot be adequately calculated with monetary damages. (Twente joint declaration ¶¶13, 15.) The potential harm to defendants is the loss of opportunity to proceed with the foreclosure sale along with the loss of immediate use of the proceeds from the sale. Here, the hardship tips in favor of plaintiffs.

The second part of the analysis goes to the reasonable probability that plaintiffs will prevail on the merits of their action. Plaintiffs, however, have failed to meet their burden. Specifically, the allegations in the complaint are contradictory with the attached exhibits and documentary evidence. The evidence establishes defendants provided plaintiffs with a trial period plan in December of 2010. (Twente supplement declaration Exhibit 3.) This contradicts claims that defendants did not contact or explore loan modification options with plaintiffs. Furthermore, plaintiffs have not sufficiently established any exception to Civil Code section 2923.6(g), which would not require defendants to reevaluate plaintiffs for a loan modification. Nor is there sufficient evidence before the court to establish a reasonable probability of prevailing on the deceit, promissory estoppel, breach of contract, or UCL violation causes of action. The complaint includes general allegations that do not provide sufficient detail to determine a probability of prevailing on these causes of action. The Twente joint declaration is also general and conclusory in nature. Even when these two are considered in conjunction with each other, there is not sufficient evidence before the court to establish a basis to grant a preliminary injunction. Plaintiffs have not met their burden and the request is denied.

The temporary restraining order is dissolved forthwith.

These are the tentative rulings for civil law and motion matters set for Thursday, September 25, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, September 24, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.